

REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
MANILA

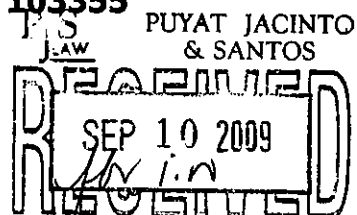
FILE TO: PEMC (P. 1249 CH. CASE)
0367.02-0011
ATTORNEY TO: PCS/NSC/MAP/JST/AC
THS/CMS.

**POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION,**
Petitioner,

- versus -

CA-G.R. SP No. 103355

**ENERGY REGULATORY COMMISSION
and PHILIPPINE ELECTRICITY
MARKET CORP.,**
Respondents.



NOTICE OF DECISION

SIR:

Please take notice that on **Aug. 28, 2009**, a **DECISION**, copy attached, was rendered by the **SPECIAL NINTH DIVISION** in the above-entitled case, the original of which is on file in this office.

Very truly yours,

VILMA S. AYALA-DASAL
Executive Clerk of Court III

Copy furnished:

**Attys. Maria Luz L. Caminero,
Cecilio B. Gellada, Jr., Liberty Z. Dumlaog,
David I. B. Ocampo & Arlene B. Evangelio - reg. w/rc**
(for the petitioner)
7th Floor, Bankmer Building
6756 Ayala Avenue, 1200 Makati City

Atty. Rachel Angela P. Anosan - reg.
(for respondent PEMC)
18th Floor, Robinsons-Equitable Tower
ADB Avenue cor. Poveda Street
Ortigas Center, 1605 Pasig City

**Attys. Roy Enrico C. Santos &
Miguel A. Robillo - reg.**
PUYAT JACINTO AND SANTOS LAW OFFICES
(for respondent PEMC)
12/F, Manila Bank Building
6772 Ayala Avenue, 1226 Makati City

**Attys. Francis Saturnino C. Juan &
Grace Lu Santos - reg.**
(for public respondent Energy Regulatory Commission)
16th Floor, Pacific Center Building
San Miguel Avenue, Ortigas Center
1605 Pasig City

**Asst. Sol. Gen. Karl B. Miranda &
Sr. State Sol. Ma. Theresa G. San Juan-Louillano - reg.**
OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legaspi Village
1229 Makati City

/mcgs/

Republic of the Philippines
COURT OF APPEALS
Manila

SPECIAL NINTH DIVISION

**POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION,**

Petitioner,

- versus -

**ENERGY REGULATORY
COMMISSION and PHILIPPINE
ELECTRICITY MARKET
CORPORATION,**

Respondents.

CA-G.R. SP NO. 103355

Members:

DE GUIA-SALVADOR, R.,
Chairman

***BRUSELAS, JR., A. D., and
LOPEZ, M. V., JJ.**

Promulgated: _____

AUG 28 2009

X ----- X

DECISION

DE GUIA-SALVADOR, R., *J.*:

Filed by petitioner *Power Sector Assets and Liabilities Management Corporation* pursuant to Rule 65 of the *1997 Rules of Civil Procedure*, the petition for prohibition at bench seeks the nullification of the January 31, 2008 Memorandum of Agreement¹ entered into between public respondent *Energy Regulatory Commission* and private respondent *Philippine Electricity Market Corporation*, together with the Protocol accompanying the same.²

* Acting Senior Member, as per Office Order No. 665-09-CMV dated August 24, 2009.

¹ pp. 22-24, *Rollo*

² pp. 25-31, *ibid.*

The Facts

The antecedent facts had been summarized in the following wise in our June 13, 2008 resolution,³ to wit:

xxx xxx xxx

"xxx xxx xxx (The record shows that) the Department of Energy, pursuant to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (*EPIRA*), created a Wholesale Electricity Spot Market (*WESM*) to "provide the mechanism of identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity."⁴ Created under Section (49) of said law, petitioner is a market participant the main purpose of which is to manage, among other matters, the sale, disposition and privatization of the generation assets, real estate and other disposable assets of the National Power Corporation.⁵ Likewise created under Section 30 of the same law, private respondent is the transitional Autonomous Group Market Operator which, thru its Market Assessment Group (*MAG*) and Enforcement and Compliance Officer (*ECO*), regulates *WESM* and is tasked to promote the competitiveness thereof, prevent and penalize any breach of its rules, settle disputes between market participants and penalize anti-competitive behavior therein.⁶

On January 31, 2008 private respondent entered into the assailed Memorandum of Agreement with public respondent, the government agency which is mandated under Section 43 of Republic Act No. 9136 to, among other matters, enforce the rules and regulations of the electricity spot market, investigate and act against any participant or player in the electricity industry for violations of any law, rule or regulation

³ pp. 76-86. *ibid.*

⁴ p. 5, *ibid.*

⁵ p. 4, *ibid.*

⁶ p. 22, *ibid.*

governing the same, including the rules on cross-ownership, anti-competitive behavior, abuse of market positions and other similar or related acts.⁷ Intended to harmonize the application of certain provisions of said law, its Implementing Rules and Regulations and the agency's Competition Rules with the **WESM** Rules and Market Manuals, the assailed Memorandum of Agreement⁸ was accompanied by a Protocol⁹ which contained the following provisions:

xxx xxx xxx

"2.2. Matters Pertaining to Breach of WESM Rules and WESM Manuals.

Under Section 43 of the EPIRA, the ERC is responsible for enforcing the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market. On the other hand, Chapter 7 of the WESM Rules lays down the procedures on how an alleged Breach is to be investigated and sanctioned by PMEC.

For orderly procedure, Breaches shall be investigated and penalized as follows:

PMEC, through the ECO, shall have the authority to initially investigate and resolve cases involving Breach. Upon completion of ECO's investigation and after PEMC shall have imposed the proper sanctions and penalties, if any, pursuant to the WESM Rules and the relevant WESM Market Manuals, PEMC shall furnish the ERC a copy of its investigation and its conclusion thereon.

⁷ pp. 7-8, *ibid.*

⁸ pp. 22-24, *ibid.*

⁹ pp. 25-31, *ibid.*

Any complaint received by the ERC involving Breach shall, at the first instance, be referred to the ECO for investigation and resolution. The ERC shall correspondingly inform the complainant of said action.

As a result of its monitoring activities, should the ERC find any irregular act or behavior which, it has reasonable ground to believe, involves a Breach, it shall refer the same to PEMC for investigation and resolution.

2.3. Matters Pertaining to Conduct of Anti-Competitive Behavior.

PEMC shall refrain from taking cognizance of a case involving Anti-Competitive Behavior unless it has been directed by the ERC to do so, or has been expressly or impliedly allowed by the ERC to conduct, an investigation of the case.

If upon complaint of a WESM member or a result of the monitoring functions of the PEMC, there is sufficient ground to believe that conduct constituting Anti-Competitive Behavior has been committed, the PEMC shall issue a Notice of Possible Commission of Anti-Competitive Behavior (the 'Notice') and transmit the same to the ERC, together with the complaint and such other relevant documents that may aid the ERC in its investigation. The ERC shall, within ten (10) business days from the receipt of the said Notice communicate to PEMC its decision to either a.) take cognizance of the investigation or b.) on a 'no objection basis', direct PEMC to investigate the matter. Unless it issues an order declaring otherwise, ERC's failure to communicate its decision within the aforesated period

shall be deemed to be a consent for PEMC to proceed with its investigation.

Upon conclusion of its investigation, and if it finds reasonable ground to believe that an Anti-Competitive Behavior has been committed, PEMC shall issue a Resolution to such effect including its recommendation to the ERC on the appropriate fines and penalties that should be imposed, if any.

2.4. Matters Pertaining to Acts that Constitute both a Breach and Anti-Competitive Behavior.

For avoidance of doubt, if an act or omission constitutes both a Breach and an Anti-Competitive Behavior, PEMC shall have the authority to investigate the Breach but shall refrain from investigating the alleged Anti-Competitive Behavior unless the ERC has consented/directed otherwise. Upon completion of its investigation, the PEMC shall impose the appropriate sanctions and penalties on the Breach, pursuant to the relevant provisions of the WESM Rules and/or WESM Market Manual."¹⁰

xxx xxx xxx

On February 29, 2008, private respondent formally requested Department of Energy Secretary Angelo Reyes to approve the conduct by its **ECO** of a formal investigation against petitioner for possible breach of **WESM** rules in respect to six power generating plants whose electricity output is traded in the **WESM**.¹¹ Together with the assailed Memorandum of Agreement and its accompanying Protocol, attached to the request was a February 1, 2008 letter from public respondent signifying its lack of objection to

¹⁰ pp. 26-27, *ibid.*

¹¹ pp. 16-20, *ibid.*

private respondent's conduct of the self same investigation¹² xxx xxx xxx."¹³

xxx xxx xxx

Contending that private respondent was bereft of jurisdiction to hear and determine possible breaches of the WESM Rules by any market participant or player in the energy sector, petitioner commenced the instant suit with the filing of its petition for prohibition on May 5, 2008. Calling attention to Section 43 of the EPIRA, petitioner alleged, among other matters, that pursuant to the same provision, the aforesaid jurisdiction was actually vested with public respondent; that the assailed Memorandum of Agreement, together with the Protocol thereto attached, are constitutive of further delegation to private respondent of powers already delegated to public respondent; and, that the procedure adopted for investigation of breaches of the WESM Rules is violative of due process. Together with the issuance of a temporary restraining order and/or writ of preliminary injunction aimed at enjoining private respondent from conducting an investigation for possible breaches of the WESM Rules, petitioner prayed for the following reliefs, viz.: (a) the issuance of a writ of prohibition to prevent the former from encroaching on or usurping the exclusive powers of public respondent; and, (b) the nullification of the assailed Memorandum of Agreement and Protocol.¹⁴

With our June 13, 2008 denial¹⁵ of petitioner's urgent motion for the issuance of a temporary restraining order and/or writ of preliminary

¹² p. 21, *ibid.*

¹³ pp. 76-80, *ibid.*

¹⁴ pp. 2-15, *ibid.*

¹⁵ pp. 76-86, *ibid.*

injunction,¹⁶ private respondent filed its comment to the petition on July 17, 2008. Faulting petitioner with failure to file a motion for reconsideration with public respondent, private respondent averred, among other matters, that its power to investigate and penalize breaches of the WESM Rules emanates directly from EPIRA and are contractual in nature; that having participated in the formulation thereof, petitioner is estopped from questioning private respondent's authority to investigate and penalize breaches of the WESM Rules; and, that as governing body possessed with self-regulatory powers, private respondent has concurrent powers over the WESM alongside public respondent. Further maintaining that the procedure for investigation does not violate due process, private respondent prayed for the dismissal of the petition for lack of merit.¹⁷

On October 9, 2008, the Office of the Solicitor General filed a manifestation (in lieu of comment), echoing petitioner's stance that public respondent has the sole authority to enforce the rules and regulations governing the WESM; and, that the Memorandum of Agreement and the Protocol constituted undue delegation of authority delegated to public respondent.¹⁸ Disagreeing with the foregoing position, public respondent filed its own November 11, 2008 comment and asseverated, among other matters, that the petition is premature considering that the investigation to be undertaken by private respondent is preliminary; and, that the latter's authority to conduct said investigation is not derived from the assailed Memorandum of Agreement but from the EPIRA, its Implementing Rules and Regulations as well as the WESM Rules. Joining private respondent in

¹⁶ pp. 61-68, *ibid.*

¹⁷ pp. 94-121, *ibid.*

¹⁸ pp. 349-363, *ibid.*

praying for the dismissal of the petition which purportedly constituted a collateral attack on the legality of the EPIRA Implementing Rules and Regulations and the WESM Rules, public respondent ultimately argued that nothing in the assailed Memorandum of Agreement and Protocol violated the EPIRA.¹⁹

The Issue

The grant of the petition at bench is urged by petitioner on the following ground, viz.:

“PRIVATE RESPONDENT IS WITHOUT JURISDICTION TO HEAR AND DETERMINE POSSIBLE BREACH OF THE WESM RULES BY ANY MARKET PARTICIPANT OR PLAYER IN THE ENERGY SECTOR; SUCH JURISDICTION IS ACTUALLY VESTED IN PUBLIC RESPONDENT BY VIRTUE OF THE EXPRESS PROVISIONS OF THE EPIRA.”²⁰

The Court’s Ruling

We find the petition bereft of merit.

A preventive remedy intended to restrain the doing of some act about to be done,²¹ a special civil action for prohibition is, like certiorari, a remedy against want or excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Section 2, Rule 65 of the *1997 Rules of Civil Procedure* provides as follows:

¹⁹ pp. 478-494, *ibid.*

²⁰ p. 6, *ibid.*

²¹ *Heirs of Eugenia Roxas, Inc. vs. Intermediate Appellate Court*, 173 SCRA 581

"Section 2. **Petition for prohibition.** - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion, amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require."

xxx xxx xxx

While it is true that the filing of a motion for reconsideration may be dispensed with where, as in the instant case, the issue raised is one purely of law,²² we find that petitioner is out on a limb in arguing that the assailed Memorandum of Agreement and Protocol constitute undue delegation of the powers delegated to public respondent under the EPIRA.²³ Joined by the Office of the Solicitor General,²⁴ petitioner maintains that the exclusive and original jurisdiction to hear and determine possible breaches of the WESM Rules is vested with public respondent, as may be gleaned from Section 43 of said law which pertinently provides as follows:

"Section 43. **Functions of the ERC.** - The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the

²² *Liberty Insurance Corporation vs. Court of Appeals*, 222 SCRA 37

²³ pp. 6-11, *Rollo*

²⁴ pp. 354-361, *ibid.*

ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

(a) Enforce the implementing rules and regulations of this Act;

xxx xxx xxx

(c) *Enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market*, for the purpose of ensuring a greater supply and rational pricing of electricity;

xxx xxx xxx

(k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(l) *Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;*

xxx xxx xxx

(r) *In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same*, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act;

xxx xxx xxx

(u) *The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the above-mentioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.* (emphasis supplied)

xxx xxx xxx

Far from comprising an undue delegation of the foregoing powers, however, our perusal of the record shows that the assailed Memorandum of Agreement and Protocol are but the offshoots of private respondent's creation as the transitional autonomous group market operator, the formulation of the WESM Rules and the contractual undertakings of market participants like petitioner. As correctly pointed out by both public respondent²⁵ and private respondent,²⁶ the latter is a creation of the EPIRA which, under Section 30 thereof, provides as follows:

Section 30. **Wholesale Electricity Spot Market.** - Within one (1) year from the effectivity of this Act, the DOE shall establish a wholesale electricity spot market composed of the wholesale electricity spot market participants. The market shall provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity.

Jointly with the electric power industry participants, the DOE shall formulate the detailed rules for the wholesale electricity spot market. Said rules shall provide the mechanism for determining the price of electricity not covered by bilateral contracts between sellers

²⁵ pp. 482-487, *ibid.*

²⁶ pp. 98-100, *ibid.*

and purchasers of electricity users. The price determination methodology contained in said rules shall be subject to the approval of ERC. **Said rules shall** also reflect accepted economic principles and **provide a level playing field to all electric power industry participants. The rules shall provide, among others, procedures for:**

xxx xxx xxx

(c) Administering the market, including criteria for admission to and termination from the market which includes security or performance bond requirements, voting rights of the participants, **surveillance and assurance of compliance of the participants with the rules and the formulation of the wholesale electricity spot market governing body;**

xxx xxx xxx

The wholesale electricity spot market shall be implemented by a market operator in accordance with the wholesale electricity spot markets rules. The market operator shall be an autonomous group, to be constituted by DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the TRANSCO. The market operator shall undertake the preparatory work and initial operation of the wholesale electricity spot market. Not later than one (1) year after the implementation of the wholesale electricity spot market, an independent entity shall be formed and the functions, assets and liabilities of the market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants. Thereafter, the administrative supervision of the TRANSCO over such entity shall cease." (emphasis supplied)

xxx xxx xxx

Pursuant to Section 5 (b) (iii) and (iv), Rule 9 of the Rules and Regulations implementing the EPIRA, on the other hand, the Department of

Energy, jointly with the Electric Power Industry Participants, was mandated to formulate detailed rules for the WESM which would provide, among other matters, a cost-effective framework for the resolution of disputes among WESM Participants, and between WESM Participants and the Market Operator; and, adequate sanctions in cases of breaches of the WESM Rules. Formulated in accordance with these guidelines after numerous public consultations and jointly endorsed by electric power industry participants, including petitioner, pursuant to DOE Department Circular No. 2002-06-003, dated June 28, 2002,²⁷ the WESM Rules provides as follows under Chapter 7²⁸ thereof, to wit:

xxx xxx xxx

"7.2.1 Compliance

The PEM Board, in consultation with the Market Operator and the System Operator, shall do all things reasonably necessary to ensure that all WESM Members comply with the WESM rules.

7.2.2 Breaches of the WESM Rules by WESM members

7.2.2.1 If a WESM Member or the Market Operator has reasonable grounds to believe that another WESM Member may have committed or may be committing a breach of the WESM Rules, the WESM Member or the Market Operator shall notify the PEM Board of the alleged breach in writing as soon as possible.

7.2.2.2 The PEM Board shall direct the Enforcement and Compliance Officer to investigate the alleged breach as soon as possible . . .

xxx xxx xxx

7.2.2.8 The Enforcement and Compliance Officer may further recommend to the PEM Board

²⁷ pp. 266-269, *ibid.*

²⁸ *Enforcement and Disputes*

that the WESM Member determined to be in breach be **suspended** in accordance with clause 3.15.7 xxx xxx xxx

xxx xxx xxx

- 7.2.2.9 If the breach is of such a nature that payment of compensation to affected parties is required, the Market Operator on behalf of the affected party may make a demand for payment under the WESM Rules **without prejudice to the fines and penalties that the ERC may impose.**

xxx xxx xxx

7.2.4 Investigations

7.2.4.1 The Enforcement and Compliance Officer may request from the WESM Member who is alleged to be in breach of the WESM Rules all information relating to the breach.

xxx xxx xxx

7.2.4.2 If a WESM Member fails to comply with a directive or request by the Enforcement and Compliance Officer for information under clause 7.2.4.1, the Enforcement and Compliance Officer may request the Market Surveillance Committee to investigate the matter and to prepare a report or such other documentation as the Enforcement and Compliance Officer may determine.

xxx xxx xxx

7.2.5 Sanctions

7.2.5.1 The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of its powers, functions and responsibilities, and over all cases involving disputes between and among participants or players in the energy sector.

7.2.5.2 In line with the principles stated in clause 7.1, *the PEM Board may impose sanctions on any participants of the WESM for breach of any provision of the WESM Rules; Provided that this is without prejudice to the authority of ERC to impose fines and penalties pursuant to Section 46 of the act.*"
(Emphasis supplied)

xxx xxx xxx

Instead of the delegated power both petitioner and the Office of the Solicitor General classify it to be, evident from the foregoing provisions is the fact that private respondent's investigative powers proceed from its being designated under the EPIRA as the autonomous group tasked with the implementation of the electricity spot market and the formulation of the WESM Rules as aforesaid. Adopted pursuant to the assailed Memorandum of Agreement,²⁹ this is made even clearer in the assailed Protocol³⁰ which further delineates the actions which may be taken by public respondent and private respondent in the following wise:

xxx xxx xxx

"2.5. Effect of PEMC Investigation on the ERC

- (a) **Breaches.** Any investigation conducted by PEMC on Breaches shall be without prejudice to any subsequent and independent action and/or investigation by the ERC against the erring WESM Members, the System Operator or the Market Operator, as the case may be. In the same manner, the conduct of an investigation by the ERC on Breaches shall not prejudice or affect the investigations being conducted or already conducted by the PEMC on the same incident/s of Breach/es.

²⁹ pp. 22-24, *Rollo*

³⁰ pp. 25-31, *ibid.*

In conducting its investigation and in imposing the proper penalties, the ERC or the PEMC, as the case may be, shall give due regard to any findings and penalties that may have been imposed by the other entity.

(b) Anti-Competitive Behaviors. Any investigation conducted by PEMC on acts constituting Anti-Competitive Behaviors shall be without prejudice to any further and/or independent actions or investigations by the ERC."³¹

xxx xxx xxx

Given that the investigations which may be conducted by private respondent are separate and distinct from those which public respondent may, on its own, conduct, we find that petitioner and the Office of the Solicitor General cannot fault the latter with undue delegation of delegated powers in favor of the former. Although complimentary and, on the surface, interlocking, the distinctiveness of said investigative powers may be readily gleaned from the February 1, 2008 letter of public respondent's Chairman which informed private respondent, in no uncertain terms, that its "findings of anti-competitive behavior or market power abuse, if any, shall not be binding on the Commission."³² Despite its entry into the assailed Memorandum of Agreement and the adoption of the assailed Protocol, it is, consequently, clear that public respondent has not abdicated its powers and prerogatives under the EPIRA in favor of private respondent.

A logical corollary to the doctrine of separation of powers, the principle of non-delegation of powers, as expressed in the Latin maxim *potestas delegata non delegare potest*, is based on the ethical principle that

³¹ p. 28, *ibid.*

³² p. 21, *ibid.*

such delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.³³ This is clearly not obtaining in the case at bench where private respondent's punitive powers, like its investigative powers, cannot be said to be derogatory of those vested to public respondent under the EPIRA. Conformably with Rule 7.2.5 of the WESM Rules as aforesaid, the assailed Protocol provides as follows:

xxx xxx xxx

"2.7. Penalties.

(a) Breaches. After the completion of its investigation, the PEMC may impose the appropriate penalties for breaches against erring WESM Members, the System Operator or the Market Operator, as the case may be, pursuant to the relevant provisions of the WESM Rules and/or the WESM Market Manuals.

It is hereby understood that the penalties that may be imposed by the PEMC for Breaches are in the nature of contractual penalties agreed upon between the PEMC, on the one hand, and the WESM Members, the System Operator and/or Market Operator on the other.

In conducting its subsequent investigation of penalties against Breaches, the ERC may adopt the penalties already imposed by the PEMC, if it finds the same sufficient and thus impose no further penalties, and/or impose additional and/or separate penalties on the erring WESM Members, the System Operator or the market Operator, as the case may be. In instances where the ERC, after investigation, determines that there is no Breach, it shall issue an Order to such effect; however, such Order shall be without

³³ *Gerochi v. Department of Energy*, 527 SCRA 696, 719

prejudice to the investigation conducted and on the penalties already imposed by the PEMC, which is hereby understood to be a separate and independent investigation from that conducted by the ERC.

(b) Anti-Competitive Behavior. In all cases involving Anti-Competitive Behavior, the appropriate penalties shall be imposed by the ERC. In those cases where the ERC consents/directs PEMC to conduct an investigation of an Anti-Competitive Behavior, PEMC shall make recommendations to the ERC for the imposition of the appropriate sanctions the alleged Anti-Competitive Behavior.

In imposing the proper penalties for Anti-Competitive Behaviors, the ERC shall have authority to adopt, reverse or modify the penalties recommended by the PEMC, and/or impose additional or separate penalties on the erring WESM Members, the System Operator or the Market Operator.

2.8. Decisions of PEMC in an Investigation. Unless restrained by the courts or the ERC, the decision of the PEMC in the conduct of its investigation in cases of Breach shall be immediately executory. Should the case be one for Anti-Competitive behavior, the penalties recommended by the PEMC may be considered by the ERC in enforcing the results of the investigation. *Without prejudice to the decision of the PEMC, any party may file an original action before the ERC raising the same and/or similar issues investigated by the PEMC. In such case, the ERC may request assistance from the PEMC but not as a party to the case.*³⁴ (Emphasis supplied)

xxx xxx xxx

³⁴ p. 29, *ibid.*

Even assuming, arguendo, that public respondent has delegated its investigative powers to private respondent, it bears emphasizing that the strict application of the non-delegation doctrine has, in recent times, been relaxed, if not minimized altogether, particularly in the context of regulatory jurisdiction of administrative agencies.³⁵ In the face of the increasing complexity of modern life, delegation of legislative power to various specialized administrative agencies is allowed as an exception to this principle.³⁶ Given the volume and variety of interactions in today's society, it is doubtful if the legislature can promulgate laws that will deal adequately with and respond promptly to the minutiae of everyday life. Hence, the need to delegate to administrative bodies – the principal agencies tasked to execute laws in their specialized fields – the authority to promulgate rules and regulations to implement a given statute and effectuate its policies.³⁷

It does not likewise help petitioner's cause any that, alongside with other market participants, it has endorsed the WESM Rules which public respondent and private respondent sought to clarify with the assailed Memorandum of Agreement and Protocol.³⁸ As such market participant, petitioner also entered into a Market Participation Agreement whereby it agreed "to be bound by and to comply with all of the provisions of the WESM Rules as well as of WESM manuals, guidelines and procedures approved by the PEM Board (referred to as 'Market Documents'), as such WESM Rules and Market Documents may be amended from time to time in accordance with its provisions, and as far as they are applicable to the

³⁵ *Sena vs. Commission on Elections*, Gr. Nos. 177597 & 178628, July 16, 2008

³⁶ *Santiago vs. Commission on Elections*, 336 Phil. 848

³⁷ *Gerochi v. Department of Energy*, 527 SCRA 696, 719

³⁸ pp. 266-269, *Rollo*

Applicant once it has been registered as a WESM Member.”³⁹ To our mind, the foregoing provision further serve as contractual basis for the investigative and punitive powers employed by private respondent independent of those exercised by public respondent.

Relating as they do to the regulation of a field so impressed with public interest as the electricity spot market, we also fail to see how the investigative and punitive powers of private respondent alongside those exercised by public respondent can be considered incongruous to the purposes of the EPIRA. While the latter is vested with broad regulatory and oversight powers over the entire electric power industry pursuant to Section 43 of said law, the former has, after all, been envisioned under Section 30 thereof as an autonomous group tasked with the implementation of the WESM which is, in turn, designed to establish a competitive, efficient, transparent and reliable market for electricity. Separate but complementary, the investigative and punitive powers of public respondent and private respondent are to be harmonized instead of being construed as contradictory and derogatory of each other.

Administrative discretion being a policy decision and a matter that can best be discharged by the government agency concerned and not by the courts,⁴⁰ the rule is likewise settled that courts will not interfere with matters which are addressed to the sound discretion of the government agency⁴¹ entrusted with the regulation of activities coming under the special and

³⁹ p. 102, *ibid.*

⁴⁰ *Yazaki Torres Manufacturing, Inc. vs. Court of Appeals*, G.R. No. 130584. June 27, 2006

⁴¹ *Republic vs. Express Telecommunications Co., Inc.*, 373 SCRA 316

technical training and knowledge of such agency.⁴² Clarificatory in nature, the assailed Memorandum of Agreement and Protocol are consistent with the WESM Rules which were formulated by the Department of Energy and the electric power industry participants in accordance with the mandate under Section 30 of the EPIRA. In the absence of a clear showing of grave abuse of discretion and undue delegation of powers on the part of public respondent, the validity of said Memorandum of Agreement and Protocol should be upheld.

Notice and hearing being the bulwark thereof,⁴³ the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek the reconsideration of the action or ruling complained of.⁴⁴ For as long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met⁴⁵ and a party cannot feign denial of due process when he had the opportunity to present his side.⁴⁶ Insofar as the investigation of petitioner's alleged non-compliance with the Submission of Offers, Scheduling and Dispatch Process, observance of these basic requirements of due process is evident from the April 30, 2008 letters of the Enforcement and Compliance Officer (ECO) directing the attendance of the former's representatives to clarify matters related to said breaches of the WESM Rules.⁴⁷

⁴² *Hydro Resources Contractors Corporation vs. National Irrigation Administration*, G.R. No. 160215. November 10, 2004

⁴³ *Globe Telecom, Inc. vs. National Telecommunications, Inc.*, 435 SCRA 110

⁴⁴ *Valiano vs. Court of Appeals*, 435 SCRA 543

⁴⁵ *Bangalisan vs. Court of Appeals*, 276 SCRA 619, 631

⁴⁶ *Amion vs. Chiongson*, 301 SCRA 614, 624

⁴⁷ pp. 69-72, *Rollo*

A similar dearth of merit may be said of petitioner's contention that private respondent stands as its accuser and judge under the existing Market Surveillance, Compliance and Market Manual⁴⁸ in that the review of the Investigation Report prepared by the ECO is vested with the Market Surveillance Committee (MSC) which is tasked, in the first instance, with the identification of the alleged breach and the request for the conduct of an investigation regarding the same.⁴⁹ As correctly pointed out by private respondent, however, the review of the Market Surveillance Committee is limited to ensuring that (a) the ECO complied with the procedure for investigation under said Manual; and, (b) the data and documents which served as bases for the ECO's factual findings are valid and complete. Under Section 10.8 of the Manual, the authority to review the action of the ECO and to approve the penalty to be imposed is, instead, vested with the PEM Board⁵⁰ which is equitably composed of power industry participants, including petitioner's President.⁵¹

Viewed in the foregoing light, petitioner's apprehension over the observance of impartiality in the resolution of investigations for breaches of the WESM Rules is bereft of factual basis. More so, when it is borne in mind that a party aggrieved with any action of the PEM Board is further afforded resort to the Dispute Resolution procedure outlined under the WESM Rules⁵² which includes resort to the filing of a formal complaint to public respondent in the event of dissatisfaction over the resolution of the

⁴⁸ pp. 32-58; 276-329, *ibid.*

⁴⁹ pp. 9-11, *ibid.*

⁵⁰ p. 49, *ibid.*

⁵¹ Rule 1.4.2.4, p. 162, *ibid.*

⁵² Rule 7.3, pp. 215-218, *ibid.*

dispute by the Dispute Resolution Panel.⁵³ Following public respondent's resolution of the dispute, the Rules ultimately provide that "any case which involves a question of fact may be appealable to the Court of Appeals and those which involves (sic) question of law may be directly appealable to the Supreme Court."⁵⁴

WHEREFORE, the petition is **DENIED** for lack of merit and is, accordingly, **DISMISSED**.

SO ORDERED.

CERTIFIED TRUE COPY

ATTY. VILMA S. AYALA-DASAS
Executive Clerk of Court III
Court of Appeals

ORIGINAL SIGNED
REBECCA DE GUIA-SALVADOR
Associate Justice

WE CONCUR:

ORIGINAL SIGNED
APOLINARIO D. BRUSELAS, JR.
Associate Justice

ORIGINAL SIGNED
MARIO V. LOPEZ
Associate Justice

⁵³ Rule 7.3.10.4, p. 218, *ibid.*

⁵⁴ Rule 7.3.12, *id.*

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ORIGINAL SIGNED

REBECCA DE GUIA-SALVADOR
Associate Justice
Chairman, Special Ninth Division